

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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WAUSAU UNDERWRITERS INSURANCE
COMPANY and TOWN SQUARE MALL
ASSOCIATES, L.L.C.,

Plaintiffs,

-against-

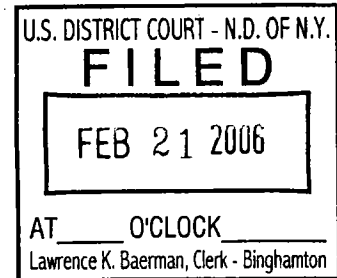
CINCINNATI INSURANCE COMPANY,

Defendant.

Civil Action No.

3 05-CV-0210 (TJM/DEP)

ORDER



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THIS MATTER having come before the Court on the motion of plaintiffs WAUSAU UNDERWRITERS INSURANCE COMPANY ("Wausau") and TOWN SQUARE MALL ASSOCIATES, L.L.C. ("Town Square") for an Order, pursuant to Fed. R. Civ. P. 56(a), granting summary judgment on their Complaint, and defendant CINCINNATI INSURANCE COMPANY ("Cincinnati") having cross-moved for an Order, pursuant to Fed. R. Civ. P. 56(b), granting summary judgment dismissing the Complaint;

NOW, upon the affidavit of Michael Matson, sworn to on the 29th day of November, 2005, the affidavit of Marshall T. Potashner, Esq., sworn to on the 29th day of November, 2005, the exhibits annexed thereto, plaintiffs' Local Practice Rule 7.1(a)(3) Statement, plaintiffs' Memorandum of Law, all

submitted by plaintiffs in support of their motion for summary judgment; and the affidavit of Randall W. Mitchell, sworn to on the 21st day of December, 2005, the affidavit of Tony Henn, sworn to on the 22nd day of December, 2005, the affidavit of Anthony J. Piazza, Esq., sworn to on the 23rd day of December, 2005, the exhibits annexed thereto, defendant's Local Rule 7.1(a)(3) Statement of Material Facts, defendant's response to plaintiffs' Local Rule 7.1(a)(3) Statement of Material Facts, the accompanying Memorandum of Law, all submitted by Cincinnati in support of its cross-motion and in opposition to plaintiffs' motion; and plaintiffs' response to defendant's Local Practice Rule 7.1(a)(3) Statement, the Reply and Opposition Memorandum of Law, all submitted in further support of plaintiffs' motion for summary judgment and in opposition to Cincinnati's cross-motion for summary judgment; and oral argument being heard by the Court on February 13, 2006, after due deliberation and the Court having rendered its decision on February 13, 2006, it is hereby

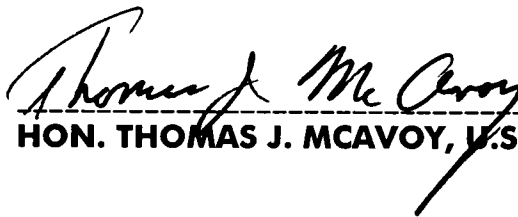
ORDERED, that plaintiffs' motion for summary judgment is hereby granted and Cincinnati's cross-motion for summary judgment is hereby denied; and it is further

ORDERED, that the Clerk of the Court is directed to enter Judgment as follows:

1. Granting summary judgment in favor of plaintiffs WAUSAU UNDERWRITERS INSURANCE COMPANY and TOWN SQUARE MALL ASSOCIATES, L.L.C. against defendant CINCINNATI INSURANCE COMPANY on the Complaint;
2. Denying defendant CINCINNATI INSURANCE COMPANY's cross-motion for summary judgment;
3. Declaring and adjudicating that defendant CINCINNATI INSURANCE COMPANY had and has a duty to defend and indemnify plaintiff TOWN SQUARE MALL ASSOCIATES, L.L.C. for the underlying action entitled Therone Williams and Eulester L. Williams against Town Square Mall Associates, Inc., Masciarelli Construction Co., Inc., and Visions Federal Credit Union, Index No. 2079/04, pending in the Supreme Court of the State of New York, Broome County, and that defendant's coverage is primary to that of plaintiff WAUSAU UNDERWRITERS INSURANCE COMPANY;
4. Awarding a money judgment in favor of plaintiff WAUSAU UNDERWRITERS INSURANCE COMPANY against defendant CINCINNATI INSURANCE COMPANY in the sum of \$108,196.71, plus pre-judgment interest at the rate of 9% per annum from October 7, 2005; and

5. Granting plaintiffs recovery of the costs and disbursements
of the instant action.

Dated: New York, New York
February 21, 2006



HON. THOMAS J. MCAVOY, U.S.D.J.